IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CRP.No. 901 of 2007

AGAINST THE ORDER IN EP.93/2003 IN
OS.341/1997 of PRL.MUNSIFF COURT, KOZHIKODE-II
.....

REVN. PETITIONER: DEFENDANTS
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1. MUHAMMATH, S/O.KUTTI ALI, KULAPPURATH PADIKKAL, NELLIKODE AMSOM, DESOM, KOZHIKODE TALUK.

2. BASHEER, AGED 39 YEARS, S/O.KUTTI ALI, KULAPPURATH PADIKKAL, NELLIKKODE AMSOM, DESOM, KOZHIKODE TALUK.

BY ADV. SRI.NIRMAL. S

RESPONDENTS: DECREE HOLDER

SYED ALAVIA JIFRIYA, 28/2762, D/O.SYED FAZAL JIFRI MAB MUKHIYA, NELLIKODE AMSOM DESOM, KOZHIKODE TALUK.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON IA NO. 2549/2007 IN C.R.P NO. 901/2007

DISMISSED

25/10/2007. **SD/- M.N.KRISHNAN, JUDGE.**

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M.N. KRISHNAN, J.

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C.R.P. NO. 901 OF 2007

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Dated this the 25th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the Principal Munsiff-II, Kozhikode in E.P.93/03 in O.S.341/97. The subject matter relates to the question where the terms of the compromise which forms the basis of the decree had been properly implemented by the person who is liable to do it. The learned counsel for the revision petitioner has taken me through the various documents. The basic document is Annexure C which is a compromise petition. As per paragraph 3 of the compromise petition there is a duty cast upon the other side that in order to avoid stagnation of water over A schedule property, mud has to be put and the level raised. Further it is also stated through the property purchased by the plaintiff, as a way for the purpose of taking vehicles to her house, a pipe can be laid beneath that way so that the water will flow to avoid stagnation. A reading of the Commissioner's report would show that the revision petitioners have substantially complied with the

terms of the decree so far as it relates to the raising of the level of the A schedule property. The only defect which is pointed out by the Court below is that as per the compromise the pipe has to be laid beneath the pathway so that most probably a better flow of water would be there which will avoid stagnation of water. The Court found that what the defendants had done is that they laid pipes, then spread earth over it and therefore there is no compliance of the decree of the Court. It is seen from the Commissioner's report that the defendants have purchased pipe and has laid down pipes but the thing is that they have not dug the pathway and laid the pipe beneath it. Most probably, when the parties enter into a compromise there must have been specific reasons for undertaking to lay the pipe beneath the pathway. I feel the said purpose can be achieved by directing the Commissioner to supervise it with the junction of both the parties. It is also made clear that since the defendants have spent considerable amount for purchase of pipes, as far as possible the same pipe itself may be used and in case of

shortage they may be directed to supply some pipes and the work completed satisfactorily and a report be filed. The plaintiff also must be conscious of the principle 'live and let live' and should not have an attitude which will cause embarrassment to others. The Court below shall, while appointing the Commissioner, bear in mind these principles and give directions and permit him to do the work to the satisfaction of both the parties.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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